



**DEPARTMENT OF TRANSPORTATION**

**[4910-EX-P]**

**Federal Motor Carrier Safety Administration**

**[Docket No. FMCSA-2013-0313]**

**Parts and Accessories Necessary for Safe Operation; Grant of Exemption For HELP Inc.**

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of final disposition.

**SUMMARY:** The Federal Motor Carrier Safety Administration (FMCSA) announces its decision to grant an exemption to HELP, Inc. that will allow the placement of its transponder systems at the bottom of windshields on commercial motor vehicles (CMVs). The Federal Motor Carrier Safety Regulations (FMCSRs) currently require antennas, transponders, and similar devices to be located not more than 6 inches below the upper edge of the windshield, outside the area swept by the windshield wipers, and outside the driver's sight lines to the road and highway signs and signals. The exemption will enable motor carriers to mount the HELP, Inc. transponder systems lower in the windshield than is currently permitted by the Agency's regulations in order to utilize a mounting location that maximizes the device's ability to send and receive roadside data. FMCSA believes that permitting the transponder systems to be mounted lower than currently allowed, but still outside the driver's sight lines to the road and highway signs and signals, will maintain a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption.

**DATES:** This exemption is effective from **June 22, 2015** until **June 22, 2017**.

**FOR FURTHER INFORMATION CONTACT:** Mr. Mr. Mike Huntley, Vehicle and Roadside Operations Division, Office of Carrier, Driver, and Vehicle Safety, MC-PSV, (202) 366-4325; Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001.

**SUPPLEMENTARY INFORMATION:**

**Background**

Section 4007 of the Transportation Equity Act for the 21st Century (TEA– 21) [Pub. L. 105–178, June 9, 1998, 112 Stat. 401] amended 49 U.S.C. 31315 and 31136(e) to provide authority to grant exemptions from the Federal Motor Carrier Safety Regulations (FMCSRs). On August 20, 2004, FMCSA published a final rule (69 FR 51589) implementing section 4007. Under this rule, FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public with an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews the safety analyses and the public comments and determines whether granting the exemption would likely achieve a level of safety equivalent to or greater than the level that would be achieved by the current regulation (49 CFR 381.305).

The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)). If the Agency denies the request, it must state the reason for doing so. If the decision is to grant the exemption, the notice must specify the person or class of persons

receiving the exemption and the regulatory provision or provisions from which an exemption is granted. The notice must also specify the effective period of the exemption (up to 2 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.315(c) and 49 CFR 381.300(b)).

### **HELP, Inc. Application for Exemption**

Help, Inc. applied for an exemption from 49 CFR 393.60(e)(1) to allow the installation of transponders on its customers' CMVs in a location that is lower than currently allowed under the regulation. Section 393.60(e)(1) of the FMCSRs prohibits the obstruction of the driver's field of view by devices mounted on the windshield. Antennas, transponders and similar devices must not be mounted more than 152 mm (6 inches) below the upper edge of the windshield. These devices must be located outside the area swept by the windshield wipers and outside the driver's sight lines to the road, highway signs and signals.

In its application, Help, Inc. states:

“Help, Inc. is making this request because we are coordinating device development and installation of PrePass transponder in up to 430,000 commercial motor vehicles. The 5.9 and toll transponder equipment installed is located at the bottom of the windshield, but within the swept area of windshield because the safety equipment must have a clear forward facing view of the road, and low enough to accurately be read by roadside infrastructure... The restrictions on the location of devices mounted in the windshield area significantly degrade the ability to capture the proper viewing area in commercial motor vehicles. A 5.9 and toll transponder which lacks an effective view of the roadside infrastructure through the front windshield will negatively impact the ability to send and receive roadside data.”

Help, Inc.'s preferred mounting location for the transponders is 2 inches right of the center of the windshield, and 2-3 inches above the dashboard. Help, Inc. states that

using this mounting location that is lower in the windshield than currently permitted by the FMCSRs “will offer the best opportunity to optimize the data transmission and evaluate the benefits of such a system” while maximizing “the external view of the roadway.”

## **Comments**

On July 31, 2013, FMCSA published notice of the application and asked for public comment (78 FR 46406). The Agency received two comments.

1. Advocates for Highway and Auto Safety (“Advocates”) provided general comments stating that it “supports the development and use of technology and devices to improve safety and vehicle operation,” but noted that it “is aware of several similar new and emerging technologies, with applications for commercial motor vehicles, that will likely come into conflict” with the regulations in 49 CFR 393.60(e)(1) and (2) that limit the location of devices and decals in the windshield of CMVs. As a result, Advocates concluded that “Advances in technology may be such that the agency should reconsider the limitations specified in section 393.60(e) and consider establishing updated guidelines which will both permit the optimal installation of beneficial safety devices while at the same time limiting the proliferation and installation of multiple devices that could interfere with a driver’s view of the road, side and rearview mirrors or, in some cases, interfere or distract the driver from the driving task.”

Specifically with respect to Help, Inc.’s application, Advocates recommended “that the agency consider the positioning/size of the device and its impact on the field of

view afforded the driver in making the determination to grant or deny this application exemption.”

*FMCSA response:* Enforcement personnel, motor carriers, regulators, and manufacturers alike are increasingly faced with accommodating the use of various technologies, designed to improve commercial motor vehicle safety, which may impact the driver’s field of view of the roadway through the windshield wiper swept area. Examples include a variety of electronic devices, window tint products, decorations, decals and stickers, sun visors and window shades, and other devices and products – all of which serve different purposes but can, in some cases, diminish or block part of the driver’s view.

The Commercial Vehicle Safety Alliance (CVSA), in cooperation with FMCSA and other industry trade associations hosted a dialogue among enforcement experts, industry representatives, and Federal regulators to help improve the common understanding of the balance between the benefits and the possible risks of using these technologies and devices. The “Technology Impacts on CMV Driver Direct Field of Vision Symposium” was held on April 22, 2013 in conjunction with the CVSA Workshop in Louisville, KY. FMCSA may consider amendments to 49 CFR 393.60(e) in the future, and will certainly use the information gathered at that symposium – in conjunction with all other available information, research, and data – in the development of such possible amendments.

While FMCSA acknowledges that Help, Inc. did not present specific studies or data showing that safety will not be degraded, the Agency believes that placement of the

transponders lower in the windshield than currently permitted will be outside the drivers' sight lines, and therefore, will not have an adverse impact on safety.

2. Mr. Paul Baute supported the application, but noted that "the exemption should not be necessary. FMCSA 393.60(e)(1) is in conflict with FMCSA 393.60(e)(2) with locations of items such as transponders and decals...FMCSR 393.60(e)(1) should be changed to allow the transponders to be mounted on the bottom of the windshield."

*FMCSA response:* The regulations at section 393.60(e)(1) and section 393.60(e)(2) do not conflict. Section 393.60(e)(1) defines the dimensional limits at the top of the windshield in which "antennas, *transponders*, and similar devices" can be mounted, whereas section 393.60(e)(2) defines the dimensional limits at the bottom of the windshield for applying "Commercial Vehicle Safety Alliance (CVSA) inspection decals, and stickers and/or decals required under Federal or State laws." Section 393.60(e)(2) does not currently allow other devices, such as transponders, to be mounted in the area at the bottom of the windshield, and any amendment to the regulation to allow such devices to be mounted in this location would have to be made through a notice-and-comment rulemaking.

### **Terms and Conditions for the Exemption**

Based on its evaluation of the application for an exemption, FMCSA grants Help, Inc.'s exemption application. The Agency believes that the safety performance of motor carriers during the 2-year exemption period will likely achieve a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption because (1) based on the technical information available, there is no indication that the

transponders would obstruct drivers' views of the roadway, highway signs and surrounding traffic; (2) generally, trucks and buses have an elevated seating position which greatly improves the forward visual field of the driver, and any impairment of available sight lines would be minimal; and (3) the location at the bottom of the windshield but within the windshield wiper sweep, and out of the driver's sightline is reasonable and enforceable at roadside. Without the exemption, Help, Inc. would be unable to utilize a mounting location that maximizes the device's ability to send and receive roadside data.

The Agency hereby grants the exemption for a two-year period, beginning **June 22, 2015** until **June 22, 2017**.

During the temporary exemption period, motor carriers using Help, Inc. transponders must ensure that the devices are mounted 2 inches right of the center of the windshield, and 2-3 inches above the dashboard. If however, because of the design and mounting of the windshield wipers on a particular CMV, use of the mounting location identified above does not result in the transponder being located within the swept area of the wipers, the transponder may be positioned such that it is located (1) to the right of the center of the windshield, and (2) as low as possible in the swept area of the wipers.

The FMCSA encourages any party having information that motor carriers utilizing this exemption are not achieving the requisite level of safety immediately to notify the Agency. If safety is being compromised, or if the continuation of the exemption is not consistent with 49 U.S.C. 31315(b) and 31136(e), FMCSA will take immediate steps to revoke the exemption.

## **Preemption**

In accordance with section 381.600 of the FMCSRs, during the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with or is inconsistent with this exemption with respect to a person operating under the exemption.

Issued on: June 3, 2015

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Chief Counsel

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